IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.180 of 2004

M/s.Sundaram Spinning Mills (P) Ltd.,
Post Box No.2,
Komarapalayam. ..Appellant

Vs

The Joint Commissioner of Income-tax,
Special Range, Salem. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench - 'C' in I.T.A. No.1375(Mds)/1999 dated 08.05.2001 for the assessment year 1985-86 against the Order of the Commissioner of Income Tax [Appeals] VII, 121, Mahatma Gandhi Road, Chennai 34 dated 22.7.1999 and made in ITA.No.68/99-2000 against the proceedings of the Deputy Commissioner of Income Tax, Special Range III, Coimbatore 18 dated 29.3.89 and made in S.102/SR.III/85-86/CBE against the order of the Income Tax Officer, Company Circle, Salem 7 dated 26.3.88 and made in S-98/COM/SLM.

For Appellant : Mr.N.Quadir Hoseyn

For Respondent : Mr.N.Muralikumaran,
Sr.Standing Counsel
for Income-tax Dept.

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the assessee, against the order of the Income Tax Appellate Tribunal, Chennai Bench - 'C' in I.T.A. No.1375(Mds)/1999 dated 08.05.2001. On 14.06.2004, this Court admitted the appeal and formulated the following substantial question of law:-

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Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding in effect that the levy of interest under Section 201 (1A) was not subject to any limitation?

2. The facts leading to the above substantial question of law are as under:

The assessee is a Private Limited Company. The relevant assessment year is 1985-86 and the corresponding accounting year ended on 31.03.1985. The Return of income was filed on 25.10.1985 claiming a loss of Rs.59,15,418/-. The assessment was completed under Section 143(3) of the Income-tax Act ("Act" in short) determining the total income at Rs.18,93,880/- after making various additions and disallowances. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal partly and the Assessing Officer passed a Consequential Order and determined the loss at Rs.31,568/-. Later, the Assessing Officer passed another Revision Order dated 02.03.1992 by way of giving effect to C.I.T.(A)'s order in which the total loss was determined at Rs.56,72,843/- and declared "N.A." for the said assessment year. Subsequently, a letter dated 19.10.1995 was received from the Dy.CIT, Salem Range on 02.03.1999 calling for details regarding payment of Tax Deducted at Source ("TDS" in short) for the said assessment year. The assessee by letter dated 15.03.1999, replied that the matter regarding TDS on interest payment was more than 14 years old and is not possession of details of payments and hence unable to furnish the details sought for. Further it was stated that the cone winding charges are labour charges not attracting the provisions of TDS. The Joint Commissioner of Income-tax, Special Range, Salem by order dated 31.03.1999, levied interest under Section 201(1A) of the Act and treated the assessee as a defaulter for recovery of the tax. The said order reads as follows:-

"TDS on interest and salary deducted but not paid : Rs.3,66,302

ADD: (a) Interest u/s.201(1A) on the above from 1.4.85 to 31.3.99 : Rs.7,69,230

(b) Tax deductible on cone winding charges of Rs.1629845 @ 2% : Rs. 32,597

(c) Interest u/s.201(1A) on TDS on cone winding charges : Rs. 68,250

Total demand : Rs.12,36,379"

Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal partly and

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confirmed the amounts relating to TDS on interest and salary and the interest thereon, while accepting the assessee's contentions regarding cone winding charges and allowed the appeal. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short) contending the inability of furnishing the details after a long lapse of time could not be equated to a finding that there was default on the part of the assessee warranting levy of interest u/s.201(1A) of the Act. The Tribunal dismissed the appeal and confirmed the order of the lower authorities. Hence the present tax case.

3. Learned counsel appearing for the assessee submitted that the Tribunal failed to appreciate that the absence of a specific period of limitation in Section 201(1A) of the Act does not entitle the revenue authorities to initiate action at any point of time. Further it is stated that eventhough the petitioner paid the amount, he could not produce the evidence before the authorities and hence the petitioner is not subject to levy of interest under Section 201(1A) of the Act. Now the counsel produced evidence regarding the payment of tax and fairly stated that the same was not filed before the lower authorities.

4. Learned Sr.Standing Counsel appearing for the Revenue submitted that the assessee had deducted tax at source on interest and salary totalling to Rs.3,66,302/- but had not remitted the same to the Government Account for the Financial Year 1984-85. It is also submitted that the assessee was asked to produce the details of the payment of the same. Further a number of opportunities were given to the assessee to submit and produce evidence regarding the payment of tax which was deducted at source, but the assessee did not produce the payment details till date. Hence the authorities are right in levying interest under Section 201(1A) of the Act and treating the assessee as a defaulter for the recovery of tax. It is not proper for the assessee to produce the evidence first time before the Court and hence, the same should be disregarded.

5. Heard the counsel. It is not in dispute that the evidence which is now produced was not filed before any of the authorities below, by the assessee. But the fact remains that the Tax Deducted at Source was paid by the assessee. Due to strike and other reasons, the said details were not produced before the authorities. Later the assessee found out the details and filed a petition dated 21.10.1999 before the Joint Commissioner of Income-tax, Salem stating the details regarding payments of tax deducted at source, which are as under:-

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Date	Particulars	Rs.
21.05.93	Challan-Salem, Srirangapalayam, SBI	25,000.00
17.05.93	Erode, Indian Bank, DD.335383	25,000.00
08.06.93	Erode, Indian Bank, DD.335864	25,000.00
21.08.93	DD.No.198706 Dt.19.08.93	1,06,045.00
08.10.93	Bhavani, KVB, DD.408492, Dt.7.10.93	60,724.00
		2,41,769.00

Further, it is also seen that the bank also confirmed the said payment of tax. The said details were produced before the concerned Assessing Officer on 21.10.1999, which is after the date of C.I.T.(A)'s order dated 22.07.1999. The counsel also fairly stated that he ought to have produced the information before the Tribunal, but due to some reason, the same was not furnished. Even though the said petition is pending, the Assessing Officer had not taken up the petition and passed any order till today. The fact now is that the assessee had produced evidence to show that he remitted the amount. Hence the authorities ought to have considered the same. Non-consideration of the particulars amount to double taxation and it also causes irreparable financial hardship to the assessee.

6. Under the circumstances, in the interest of justice, it is proper for the authorities to consider the matter. Hence we set aside the order of the Tribunal as well as the lower authorities, with a direction to the Assessing Authority to consider the matter afresh after giving proper opportunity to the assessee and pass orders in accordance with law, as expeditiously as possible. It is for the assessee to file further evidence or materials if it is necessary before the Assessing Officer, regarding the proof of making payment and raise all contentions to support his case and cooperate with the Department in completing the proceedings without any further delay.

7. With the above observation the tax case is disposed of. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Chennai Bench-C,
   Rajaji Bhavan, III Floor, Besant Nagar, Chennai 90.

2. The Commissioner of Income Tax,
   Special Range III, Coimbatore 18.

3. The Commissioner of Income-tax (Appeals) VII,
   Chennai-600 034.

4. The Joint Commissioner of Income-tax,
   Special Range, Salem-636 007.

5. The Deputy Commissioner of Income-tax,
   Special Range, Salem-7.

6. The Income-tax Officer,
   Company Circle, Salem-7.

+ 1 CC To Mr.N.Quadir Hoseyn, Advocate SR NO.32145

+ 1 CC To Mr. N.Muralikumaran, Advocate SR NO.31589

T.C.(A) No.180 of 2004

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